

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE NIETO, JR.,

Plaintiff,

v.

CALIBER HOME LOANS, INC., *et al.*,

Defendants.

Case No. 2:20-cv-00422-TLN-JDP (PS)

FINDINGS AND RECOMMENDATIONS  
THAT THIS MATTER BE REMANDED FOR  
LACK OF SUBJECT MATTER  
JURISDICTION

Plaintiff commenced this action in the Superior Court of the State of California for the County of San Joaquin. ECF No. 1. Defendants Caliber Home Loans, Inc. (“Caliber”) and U.S. Bank Trust, N.A. (“U.S. Bank”), the latter in its capacity as trustee for LSF9 Master Participation Trust, removed the case to this court, invoking diversity jurisdiction under 28 U.S.C. § 1332(a). *Id.* at 2-5. The notice of removal states that defendant MTC Financial, Inc. (“MTC”) is a nominal party that should not be considered in assessing diversity jurisdiction; the notice states that MTC filed a declaration of non-monetary status under California Civil Code § 2924*l*. *Id.* at 3-4.

On August 10, 2022, I ordered defendants to show cause why this case should not be remanded to state court for lack of subject matter jurisdiction, since both plaintiff and MTC appear to be citizens of California. ECF No. 53. I noted that, notwithstanding the declaration of non-monetary status, MTC appears not to be a nominal party because plaintiff seeks to hold it liable for wrongful conduct. *Id.* at 2-3; *see Taasan v. JPMorgan Chase Bank, N.A.*, No. 2:18-cv-

1 698-WBS-EFB, 2018 WL 4027016, at \*3-4 (E.D. Cal. Aug. 21, 2018); *see also Herscu v. Wells*  
2 *Fargo Bank, N.A.*, No. 12-cv-96-BEN-BLM, 2012 WL 439698, at \*2 (S.D. Cal. Feb. 10, 2012)  
3 (“The citizenship of [the defendant] may not be ignored for diversity purposes because it has filed  
4 a Declaration of Non-Monetary Status.”); *Sublett v. NDEX W., LLC*, No. 11-cv-185-L (WMC),  
5 2011 WL 663745, at \*2 (S.D. Cal. Feb. 14, 2011) (“A defendant’s declaration of nonmonetary  
6 status, which excuses a party from active participation in a case, is not conclusive.”).

7 In response to the order to show cause, defendants Caliber and U.S. Bank state that they  
8 do not oppose remand. ECF No. 54. Considering that these defendants do not dispute the  
9 absence of diversity jurisdiction, they have failed to establish this court’s subject matter  
10 jurisdiction. *See Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988) (“The  
11 burden of establishing federal jurisdiction is on the party seeking removal, and the removal statute  
12 is strictly construed against removal jurisdiction.”); *see also Gaus v. Miles, Inc.*, 980 F.2d 564,  
13 566 (9th Cir. 1992) (“Federal jurisdiction must be rejected if there is any doubt as to the right of  
14 removal in the first instance.”). The case should therefore be remanded to state court. 28 U.S.C.  
15 § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject  
16 matter jurisdiction, the case shall be remanded.”).

17 Accordingly, it is hereby RECOMMENDED that:

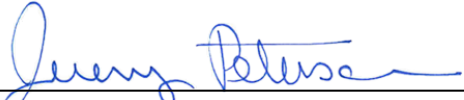
18 1. This case be REMANDED sua sponte to the Superior Court of the State of California  
19 for the County of San Joaquin.

20 2. Defendants’ motion for judgment on the pleadings, ECF No. 46, be denied as moot.

21 I submit these findings and recommendations to the district judge under 28 U.S.C.  
22 § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,  
23 Eastern District of California. The parties may, within 14 days of the service of the findings and  
24 recommendations, file written objections to the findings and recommendations with the court.  
25 Such objections should be captioned “Objections to Magistrate Judge’s Findings and  
26 Recommendations.” The district judge will review the findings and recommendations under 28  
27 U.S.C. § 636(b)(1)(C).  
28

1  
2 IT IS SO ORDERED.

3  
4 Dated: August 23, 2022

  
JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE